



LEGAL BRIEFS

From the Fort Knox Legal Assistance Office

WEST VIRGINIA DIVORCE LAW

WHAT ARE THE GROUNDS FOR DIVORCE?

Under West Virginia law, a divorce may be granted on the basis of the following grounds: adultery, when either party subsequent to the marriage has been convicted for the commission of a crime which is a felony, abandonment or desertion for six months, cruel or inhumane treatment, habitual drunkenness, habitual drug use subsequent to marriage, separation for at least one year without interruption, permanent insanity if the person has been confined in a mental hospital for not less than three consecutive years preceding the filing of the case, child abuse of child of marriage, and irreconcilable differences.

Condonation after knowledge of a ground for divorce, uncorroborated testimony of a prostitute, or that the offense charged was committed by the procurement or connivance of plaintiff is a defense. Collusion shall not be pleaded as a bar to a divorce. There is no requirement for a period of separation unless separation (one year) is the basis for the divorce. There is no statutory provision for time required before remarriage or recognition of foreign divorces.

WHAT ARE THE PROCEDURES?

If the grounds for divorce is adultery, the plaintiff must have been a resident for one year next preceding the commencement of the action. If the grounds for divorce is other than adultery, either party may fulfill the one-year residency requirement. Service of process may be accomplished by personal service, delivery to the usual place of abode to a member of the family over 16 years of age, posting a copy upon the front door of same, delivery to an agent or attorney in fact, and also service by mail and publication if personal service is not possible. An answer must be received with 30 days after service and it must be verified. All pleadings must be verified.

WHAT MAIN ISSUES ARE ADDRESSED IN THE DIVORCE DECREE?

The divorce decree issued by the judge will address issues of child custody and visitation, child support, spousal maintenance, and property division. If the parties can agree on these issues, the terms of their agreement can be incorporated into the decree. If the parties cannot agree, the judge will decide these issues as follows:

a. Alimony and Child Support

The court may, at any time after commencement of action and notice to other party, make any order compelling either party to pay any sum necessary for maintenance of other party and to enable him or her to carry on or defend action, or to provide for custody and maintenance of minor children of parties, or to preserve the estate of either party, or to compel either party to give security to abide such order, or to compel either party to deliver to the other any of his or her separate estate, or to

prevent either from interfering with the separate estate of the other. Upon granting a divorce, a court may make such further orders from time to time as it deems expedient concerning maintenance of parties and care, custody, education, and maintenance of minor children. In making determinations as to the appropriate amount of alimony or child support, courts shall take into consideration the financial needs of the parties, length of marriage, income abilities, ages, physical and mental condition of each, educational qualifications, cost of providing health care and education to children, the earnings of the husband and wife, the property of the spouses, and other factors the court deems appropriate to consider in order to arrive at a fair and equitable grant of alimony, child support or separate maintenance.

b. Child Custody and Visitation

The Court shall award custody as it deems expedient. Consideration is given to the same factors as those for child support, also the misconduct that led to the action, and finally the controlling consideration is always the child's welfare. The court may grant reasonable visitation rights to any grandparent upon proper application.

c. Property Division

The method of property distribution is equitable distribution. The court may award attorney's fees and court costs as justice requires. Military retired pay is divisible as marital property by statute. Whenever the court enters an order requiring a division of property and it appears that military retired or retainer pay, pursuant to the Uniformed Services' Former Spouses Protection Act will be effected, the court is to specifically provide for the payment of an amount, expressed in dollars or as a percentage of the retired or retainer pay, from the disposable retired or retainer pay of the payor party to the payee party.

WHAT ARE THE TAX CONSEQUENCES OF DIVORCE?

Spousal maintenance may be deducted by the payor on the federal income tax return if certain conditions are met. If the maintenance is deducted from the payer, then it will be included in the gross income of the payee. Child support payments are not deductible from the payor's federal income tax return and are not included in the custodial parent's gross income. The custodial parent is entitled to an exemption for the child. The custodial parent can waive this right, in writing, allowing the noncustodial parent to claim the exemption.

If you have any questions concerning these matters, please call the Legal Assistance Office for an appointment at (502) 624-2771. Our hours of operation are Monday through Friday, 0800 - 1600. The Fort Knox Legal Assistance Office is located in Building 1310, Pike Hall.